

## INTERIM RULEMAKING NOTICE FORM

Proposed Interim Rule Number

**2016-34**

Rule Number

**He-P 804.01;  
He-P 804.03 through  
He-P 804.25**

<p>1. Agency Name &amp; Address:</p> <p><b>NH Dept. of Health &amp; Human Services Health Facilities Administration 129 Pleasant Street, Brown Building Concord, NH 03301</b></p> <p>5. Filing Date: <b>October 31, 2016</b></p>	<p>2. RSA Authority: <b>RSA 151:9, I</b></p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:</p> <p>Adoption <u><b>X</b></u></p> <p>Amendment _____</p> <p>Repeal _____</p> <p>Readoption _____</p> <p>Readoption w/amendment _____</p>
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6. Short Title: **ASSISTED LIVING RESIDENCE-RESIDENTIAL CARE LICENSING**

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

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TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

**The proposed rules may be viewed and downloaded at:**  
[\*\*http://www.dhhs.nh.gov/oos/aru/comment.htm\*\*](http://www.dhhs.nh.gov/oos/aru/comment.htm)

8. Summary explaining the effect of the rule:

**He-P 804 sets forth the requirements necessary to establish, operate, and maintain a licensed assisted living residence-residential care licensing facility in the state of New Hampshire in a manner that protects the safety and welfare of its residents.**

**Most of He-P 804 expired on April 3, 2016. Pursuant to RSA 541-A:19, I(e), the adoption of the expired rules as interim rules is necessary to minimize the time between the expiration of these rules and their subsequent readoption by the Department.**

9. Listing of people, enterprises, and government agencies affected by the rule:

**This interim rule affects those entities operating, or seeking to operate, a licensed assisted living residence-residential care licensing facility in the state of New Hampshire, and their residents.**

10. Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement.

<b>RULE</b>	<b>STATE OR FEDERAL STATUTE THE RULE IMPLEMENTS</b>
He-P 804.01	RSA 151:9, I(a); RSA 151:9, VII(a)(1)
He-P 804.03	RSA 151:9, I(a); RSA 151:9, VII(a)(1)
He-P 804.04 – He-P 804.06	RSA 151:9, I(c); RSA 151:9, VII(a)(1)
He-P 804.07 – He-P 804.08	RSA 151:9, I(a); RSA 151:9, VII(a)(1)
He-P 804.09	RSA 151:9, I(e); RSA 151:9, VII(a)(1)
He-P 804.10	RSA 151:9, I(a); RSA 151:9, VII(a)(1)
He-P 804.11	RSA 151:9, I(e); RSA 151:9, VII(a)(1)
He-P 804.12	RSA 151:9, I(l); RSA 151:9, VII(a)(1)
He-P 804.13	RSA 151:9, I(f); RSA 151:9, VII(a)(1)
He-P 804.14 – He-P 804.25	RSA 151:9, I(a); RSA 151:9, VII(a)(1)

11. Summary of the effect upon the state if the rule were not adopted:

**If this interim rule is not adopted, the Department will continue to lack the necessary enforcement mechanism to properly regulate these licensed facilities.**

12. Proposed date of review by the Joint Legislative Committee on Administrative Rules:

**November 17, 2016**

13. The fiscal impact statement prepared by the Legislative Budget Assistant

**Not applicable.**

**Adopt He-P 804.01 and He-P 804.03 through He-P 804.25, effective 4/3/08 (Document #9121), and expired on 4/3/16, cited and to read as follows:**

## CHAPTER He-P 800 RESIDENTIAL CARE AND HEALTH FACILITY RULES

### PART He-P 804 ASSISTED LIVING RESIDENCE–RESIDENTIAL CARE LICENSING

He-P 804.01 Purpose. The purpose of this part is to set forth the classification of and licensing requirements for assisted living residence–residential care (ALR-RC) pursuant to RSA 151:2, I(e)(2) and as described in RSA 151:9, VII(a)(1).

#### He-P 804.03 Definitions.

- (a) “Abuse” means “emotional abuse,” “sexual abuse” or “physical abuse” as defined in this section.
- (b) “Activities of daily living (ADL)” means basic daily routine tasks such as eating, transferring, toileting, bathing, dressing and medication management.
- (c) “Administer” means “administer” as defined by RSA 318:1, I, namely “an act whereby a single dose of a drug is instilled into the body of, applied to the body of, or otherwise given to a person for immediate consumption or use.”
- (d) “Administrative remedy” means an action imposed upon a licensee in response to non-compliance with RSA 151 and He-P 804.
- (e) “Administrator” means the licensee or individual appointed by the licensee to be responsible for all aspects of the daily operation of the licensed premise.
- (f) “Admission” means the point in time when a resident, who has been accepted by a licensee for the provision of services, physically moves into the facility.
- (g) “Agent” means an adult to whom authority to make health care decisions is delegated under an activated durable power of attorney for health care executed in accordance with RSA 137-J.
- (h) “Applicant” means an individual, agency, partnership, corporation, government entity, association, or other legal entity seeking a license to operate an ALR-RC pursuant to RSA 151.
- (i) “Assessment” means an evaluation of the resident to determine the care and services that are needed.
- (j) “Assisted living residence–residential care (ALR-RC)” means a long term care residence providing personal assistance at the residential care level pursuant to RSA 151:9, VII(a)(1).
- (k) “Care plan” means a written guide developed by the licensee, in consultation with the resident, guardian, agent or personal representative, if any, as a result of the assessment process for the provision of care and services.
- (l) “Change of ownership” means the transfer of the controlling interest of an established ALR-RC to any individual, agency, partnership, corporation, government entity, association or other legal entity.

(m) “Chemical restraints” means any medication prescribed to control a resident’s behavior or emotional state without a supporting diagnosis or when used for the convenience of program staff.

(n) “Commissioner” means the commissioner of the New Hampshire department of health and human services, or his or her designee.

(o) “Core services” means those services provided by the licensee that are included in the basic rate.

(p) “Days” means calendar days unless otherwise specified in the rule.

(q) “Deficiency” means any action, failure to act or other set of circumstances that cause a licensee to be out of compliance with RSA 151 or He-P 804.

(r) “Department” means the New Hampshire department of health and human services.

(s) “Direct care personnel” means any person providing hands on care and services to a resident.

(t) “Directed plan of correction” means a plan developed and written by the department that specifies the actions the licensee must take to correct identified deficiencies.

(u) “Emergency plan” means a document outlining the responsibilities of personnel in an emergency.

(v) “Emotional abuse” means the misuse of power, authority, or both, verbal harassment, or unreasonable confinement which results or could result in the mental anguish or emotional distress of a resident.

(w) “Exploitation” means the illegal use of a resident’s person or property for another person’s profit or advantage, or the breach of a fiduciary relationship through the use of a person or person’s property for any purpose not in the proper and lawful execution of a trust, including, but not limited to, situations where a person obtains money, property, or services from a resident through the use of undue influence, harassment, duress, deception, or fraud.

(x) “Guardian” means a person appointed in accordance with RSA 464-A to make informed decisions relative to the resident’s health care and other personal needs.

(y) “Household member” means the caregiver, all family members and any other individuals age 17 or older that reside at the licensed premises for more than 30 days.

(z) “Infectious waste” means those items specified by Env-Sw 103.28.

(aa) “In-service” means an educational program, which is designed to increase the knowledge, skills, and overall effectiveness of personnel.

(ab) “Inspection” means the process followed by the department to determine an applicant’s or a licensee’s compliance with RSA 151 and He-P 804 or to respond to allegations of non-compliance with RSA 151 and He-P 804.

(ac) “License” means the document issued to an applicant as an ALR-RC which authorizes operation of an ALR-RC in accordance with RSA 151 and He-P 804, and includes the name of the licensee, the name of the business, the physical address, the license category, the effective date and license number.

(ad) “License certificate” means the document issued by the department to an applicant or licensee that, in addition to the information contained on a license, includes the name of the administrator, the type(s) of services authorized and the number of beds that the ALR-RC is licensed for.

(ae) “Licensed practitioner” means a:

- (1) Medical doctor;
- (2) Physician's assistant;
- (3) Advanced registered nurse practitioner (ARNP);
- (4) Doctor of osteopathy; or
- (5) Doctor of naturopathic medicine.

(af) “Licensed premises” means the building that comprises the physical location that the department has approved for the licensee to conduct operations in accordance with its license.

(ag) “Licensee” means any person or other legal entity to which a license has been issued pursuant to RSA 151.

(ah) “Licensing classification” means the specific category of services authorized by a license.

(ai) “Mechanical restraint” means any device or system such as full bed rails, gates or half doors, if they prohibit a resident’s free movement throughout the living areas of the ALR-RC, geri chairs, when used in a manner that prevents or restricts a resident from getting out of the chair at will, wrist or ankle restraints, vests or pelvic restraints.

(aj) “Medication” means a substance available with or without a prescription, which is used as a curative or remedial substance.

(ak) “Mobile” means capable of moving from place to place, with or without assistive devices, without the assistance of others.

(al) “Neglect” means an act or omission that results or could result in the deprivation of essential services or supports necessary to maintain the minimum mental, emotional or physical health and safety of a resident.

(am) “Nursing care” means the provision or oversight of a physical, mental, or emotional condition or diagnosis by a nurse that, if not monitored on a routine basis by a nurse, would or could result in a physical or mental harm to a resident.

(an) “Nursing care plan” means a written guide developed by a nurse in consultation with the resident and guardian, agent, or personal representative, that lists the interventions necessary to meet the resident’s nursing needs.

(ao) “Orders” means prescriptions, instructions for treatments, special diets or therapies given by a licensed practitioner, or other professional with prescriptive powers.

(ap) “Over-the-counter medications” means non-prescription medications.

(aq) “Patient rights” means the privileges and responsibilities possessed by each resident provided by RSA 151:21.

(ar) “Personal assistance” means providing or assisting a resident in obtaining one or more of the following services:

- (1) Assistance with ADL;
- (2) Assistance with other activities such as doing laundry, cleaning of living areas, food preparation, writing letters, making appointments, using the telephone, or engaging in recreational or leisure activities;
- (3) Supportive services such as recreational and leisure activities, transportation, social services, legal services, dental, other habilitation services, respite services, or other services required to meet a resident's needs; or
- (4) Monitoring a resident's activities to provide for the resident's and others' safety and well-being, including general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain his or her residence in the facility, or who needs assistance to manage his or her personal or financial affairs, regardless of whether a guardian has been appointed for the person.

(as) “Personal care” means the care of residents who do not require chronic or convalescent medical, nursing or rehabilitative care.

(at) “Personal representative” means a person designated in accordance with RSA 151:19, V to assist the resident for a specific, limited purpose or for the general purpose of assisting the resident in the exercise of any rights.

(au) “Personnel” means individual(s) who provide direct or indirect care or services, or both, to a resident(s).

(av) “Physical abuse” means the use of physical force that results or could result in physical injury to a resident.

(aw) “Physical restraint” means the use of hands-on or other physically applied technique to physically limit the resident’s freedom of movement, which includes but are not limited to forced escorts, holding, prone restraints or other containment techniques.

(ax) “Plan of correction (POC)” means a plan developed and written by the licensee, which specifies the actions that will be taken to correct deficiencies identified by the department.

(ay) “Pro re nata (PRN) medication” means medication taken as circumstances may require.

(az) “Procedure” means a licensee's written, standardized method of performing duties and providing services.

(ba) “Protective care” means the provision of resident monitoring services, including but not limited to:

(1) Knowledge of resident whereabouts; and

(2) Minimizing the likelihood of accident or injury.

(bb) “Resident” means any person admitted to or in any way receiving care, services or both from a facility licensed in accordance with RSA 151 and He-P 804.

(bc) “Resident assessment tool (RAT)” means the document developed by the department to assess the needs of a resident or prospective resident as required by RSA 151:5-a, I.

(bd) “Resident record” means a separate file maintained for each resident, which includes all documentation required by RSA 151 and He-P 804, and as required by other federal and/or state laws.

(be) “Respite care” means the admission of a person from his or her primary residence to an ALR-RC, on either a planned or emergency basis, for a period not to exceed 21 days in order to relieve the primary caregiver from the demands of providing home-based care.

(bf) “Self administration of medication” means an act whereby the resident takes his or her own medication(s) without the assistance of another person.

(bg) “Self administration of medication with supervision” means the resident takes his or her own medication(s) after being prompted by personnel, but without requiring physical assistance from others.

(bh) “Self directed medication administration” means an act whereby a resident, who has a physical limitation that prohibits him or her from self-administering, directs personnel to physically assist in the medication process.

(bi) “Self evacuate” means the resident can initiate and complete movement from any location in the ALR-RC to an exit without staff assistance.

(bj) “Service” means a specific activity performed by the licensee, either directly or indirectly, to benefit or assist a resident.

(bk) “Sexual abuse” means contact or interaction of a sexual nature involving a resident without his or her informed consent.

(bl) “Significant change” means a visible or observable change in functional, cognitive or daily activity ability or limitations of the resident.

(bm) “State monitoring” means the placement of individuals by the department at an ALR-RC to monitor the operation and conditions of the facility.

(bn) “Therapeutic diet” means a diet ordered by a licensed practitioner or other licensed professional with prescriptive authority as part of the treatment for disease, clinical conditions, or increasing or decreasing specific nutrients in the food consumed by the resident.

(bo) “Unexplained absence” means an incident involving a resident leaving the premises of the ALR-RC without the knowledge of the ALR-RC personnel.

(bp) “Unusual incident” means an occurrence of any of the following while the resident is either in the ALR-RC or in the care of ALR-RC personnel:

- (1) The unanticipated death of a resident;
- (2) An accident or other unanticipated circumstance that has resulted in an injury that requires treatment by a licensed practitioner; or
- (3) An elopement from the ALR-RC or other circumstances that resulted in the notification and/or involvement of law enforcement.

He-P 804.04 License Application Submission.

(a) Each applicant for a license shall comply with the requirements of RSA 151:4, I–III(a) and submit the following to the department:

- (1) A completed application form entitled “Application for Residential or Health Care License,” signed by the applicant or 2 of the corporate officers, affirming to the following:

“I affirm that I am familiar with the requirements of RSA 151 and the rules adopted thereunder and that the premises are in full compliance. I understand that providing false information shall be grounds for denial, suspension, or revocation of the license and the imposition of a fine.”

- (2) A floor plan of the prospective ALR-RC;
- (3) If applicable, proof of authorization from the New Hampshire secretary of state to do business in the state of New Hampshire in the form of one of the following:
  - a. “Certificate of Authority,” if a corporation;
  - b. “Certificate of Formation,” if a limited liability corporation; or
  - c. “Certificate of Trade Name,” where applicable;
- (4) The applicable fee, in accordance with RSA 151:5, I(a), payable in cash or, if paid by check or money order, in the exact amount of the fee made payable to the “Treasurer, State of New Hampshire”;
- (5) A resume identifying the qualifications of the ALR-RC administrator;
- (6) Copies of applicable licenses for the ALR-RC administrator; and
- (7) Written local approvals as follows:
  - a. For an existing building, the following written local approvals shall be obtained no more than 90 days prior to submission of the application, from the following local officials or if there is no such official(s), from the board of selectmen or mayor:
    1. The health officer verifying that the applicant complies with all applicable local health requirements and drinking water and wastewater requirements;



2. The building official verifying that the applicant complies with all applicable state building codes and local building ordinances;
3. The zoning officer verifying that the applicant complies with all applicable local zoning ordinances; and
4. The fire chief verifying that the applicant complies with Saf-C 6000, the state fire code, including, at a minimum, the residential board and care chapter of NFPA 101 as adopted by the department of safety, and local fire ordinances applicable for an assisted living residence; residential care; and

b. For a building under construction, the written approvals required by a. above shall be submitted at the time of the application based on the local official's review of the building plans and again upon completion of the construction project;

(8) A copy of the ALR-RC's admission agreement;

(9) A copy of the ALR-RC's standard disclosure form;

(10) Documentation that the water supply has been tested in accordance with RSA 485 and Env-Ws 313.01 and 314.01, or documentation that the ALR-RC is on a municipal water supply as defined in Env-Ws 302.45;

(11) For renewal of a license;

a. Documentation that every 3 years the water supply has been tested for bacteria and nitrates and determined to be at acceptable levels, in accordance with Env-Ws 313.01 for bacteria and Env-Ws 314.01 for nitrates; or

b. Documentation that the ALR-RC is on a municipal water supply as defined in Env-Ws 302.45; and

(12) A written disclosure from the applicant, licensee, administrator, and each household member, as applicable, containing a list of any:

a. Convictions in this or any other state;

b. Adjudications of juvenile delinquency;

c. Permanent restraining or protective orders;

d. Findings by the department or any administrative agency in this or any other state for assault, fraud, abuse, neglect or exploitation;

e. An explanation of the circumstances surrounding disclosure of matters described in a. through d. above; and

(13) The results of a criminal records check from the NH Department of Safety for the applicant, licensee, administrator, and each household member, as applicable.

(b) Information disclosed regarding adjudication of juvenile delinquency, as required by (a)(12)b. above, shall be confidential and shall not be released except in a proceeding involving the question of licensure or revocation of a license, or pursuant to court order.

(c) The applicant shall mail or hand-deliver the documents to:

Department of Health and Human Services  
Health Facilities Administration  
129 Pleasant Street  
Concord, NH 03301

He-P 804.05 Processing of Applications and Issuance of Licenses.

(a) An application for an initial license shall be complete when the department determines that all items required by He-P 804.04(a) have been received.

(b) If an application does not contain all of the items required by He-P 804.04(a) the department shall notify the applicant in writing of the items required before the application can be processed.

(c) Any licensing fee submitted to the department in the form of a check or money order and returned to the state for any reason, shall be processed in accordance with RSA 6:11-a.

(d) Licensing fees shall not be transferable to any other application(s).

(e) The department shall deny a licensing request in accordance with He-P 804.13(b) after reviewing the information in He-P 804.04(a)(12) and (13) above if, after review, it determines that the applicant, licensee, administrator or a household member has been convicted of or adjudicated for a sexual assault or other violent crime, or fraud, or a finding of abuse, neglect or exploitation in this or any other state, or poses a threat to the health, safety or well-being of a resident.

(f) All licenses issued in accordance with RSA 151 shall be non-transferable by person or location.

(g) Following an inspection, a license shall be issued if the department determines that an applicant requesting an initial license is in full compliance with RSA 151 and He-P 804.

(h) A license certificate shall be issued at the time of initial licensure.

He-P 804.06 License Expirations and Procedures for Renewals.

(a) A license shall be valid on the date of issuance and expire the following year on the last day of the month it was issued unless a completed application for renewal has been received.

(b) Each licensee shall complete and submit to the department an application form pursuant to He-P 804.04(a)(1) at least 120 days prior to the expiration of the current license.

(c) The licensee shall submit with the renewal application:

(1) The materials required by He-P 804.04(a)(1), (4), (11) and (12);

(2) The current license number;

- (3) A request for renewal of any existing waiver previously granted by the department, in accordance with He-P 804.10(f), if applicable; and
  - (4) A statement identifying any variances applied for or granted by the state fire marshal, in accordance with Saf-C 6005.03-6005.04.
- (d) Following an inspection, a license shall be renewed if the department determines that the licensee:
- (1) Submitted an application containing all the items required by (c) above, prior to the expiration of the current license;
  - (2) If deficiencies were cited at the last licensing inspection or investigation, has submitted a POC that has been accepted by the department and implemented by the licensee; and
  - (3) Is found to be in compliance with RSA 151 and He-P 804 at the renewal inspection.
- (e) Prior to issuing a license, the department shall review any of the information submitted in accordance with He-P 804.04(a)(12) and deny a license renewal in accordance with He-P 804.05(e).

He-P 804.07 ALR-RC Construction, Modifications or Renovations.

- (a) Sixty days prior to initiating construction, the ALR-RC shall provide to the department notice and plans drawn to scale for construction, renovation or structural alterations for the following:
- (1) A new building;
  - (2) Additions to a building;
  - (3) Alterations to a resident's bedroom as specified in He-P 804.24(m)-(p);
  - (4) Alterations that require approval from local or state authorities; and
  - (5) Alterations that might effect compliance with the health and safety, fire or building codes, including but not limited to, fire suppression, detection systems and means of egress.
- (b) The department shall review plans for construction, renovation or structural alterations of an ALR-RC for compliance with all applicable sections of RSA 151 and He-P 804 and notify the applicant or licensee as to whether the proposed changes comply with these requirements.
- (c) Department approval shall not be required prior to initiating construction, renovations or structural alterations, however an applicant or licensee who proceeds prior to receiving approval does so at their own risk.
- (d) The ALR-RC shall comply with the applicable licensing rules.
- (e) A licensee or applicant constructing, renovating, or structurally altering a building shall comply with the following:
- (1) The state fire code, Saf-C 6000, including but not limited to at a minimum the residential board and care chapter of NFPA 101, as adopted under RSA 153; and

(2) The state building code, pursuant to RSA 155-A.

(f) The completed building shall be subject to an inspection pursuant to He-P 804.09 prior to its use.

He-P 804.08 ALR-RC Requirements for Organizational or Service Changes.

(a) The ALR-RC shall provide the department with written notice at least 30 days prior to changes in any of the following:

- (1) Ownership;
- (2) Physical location;
- (3) Address;
- (4) Name;
- (5) Number of beds; or
- (6) Services.

(b) The ALR-RC shall complete and submit a new application and obtain a new license prior to operating for:

- (1) A change in ownership;
- (2) A change in the physical location; or
- (3) An increase in number of beds.

(c) When there is a change in the address without a change in location, the ALR-RC shall provide the department with a copy of the notification from the local, state or federal agency that requires the address change.

(d) The ALR-RC shall inform the department in writing as soon as possible prior to a change in administrator and provide the department with the following:

- (1) The information specified in He-P 804.04(a)(12) and (13);
- (2) A resume identifying the name and qualifications of the new administrator; and
- (3) Copies of applicable licenses for the new administrator.

(e) Upon review of the materials submitted in accordance with (d) above, the department shall make a determination as to whether the new administrator:

- (1) Meets the criteria identified in He-P 804.13(b)(10); and
- (2) Meets the qualifications for the position as specified in He-P 804.18(j) and (k).

(f) If the department determines that the new administrator does not meet the qualifications, it shall so notify the program in writing so that a waiver can be sought or the program can search for a qualified candidate.

(g) When there is a change in the name, the ALR-RC shall submit to the department a copy of the certificate of amendment from the New Hampshire Secretary of State, if applicable.

(h) When there is to be a change in the services provided, the ALR-RC shall provide the department with a description of the service change and, where applicable, identify what additional personnel will be hired and their qualifications, how the new services will be incorporated into the infection control and quality improvement programs and describe what changes, if any, in the physical environment will be made.

(i) The department shall review the information submitted under (h) above and determine if the added services can be provided under the ALR-RC's current license.

(j) An inspection by the department shall be conducted prior to operation for changes in the following:

- (1) Ownership, unless the current licensee has no outstanding administrative actions in process and there will be no changes made by the new owner in the scope of services provided;
- (2) The physical location;
- (3) An increase in the number of beds or residents; or
- (4) A change in licensing classification.

(k) A new license shall be issued for a change in ownership.

(l) A revised license shall be issued for:

- (1) A change in physical location;
- (2) A change in name; or
- (3) A change in services or addition of new services.

(m) A revised license certificate shall be issued for any of the following:

- (1) A change of administrator;
- (2) An increase or decrease in the number of beds;
- (3) A change in the scope of services;
- (4) A change in address without a change in physical location; or
- (5) When a waiver has been granted.

(n) Licenses issued under (j)(1) above shall expire on the date the license issued to the previous owner would have expired.

#### He-P 804.09 Inspections.

(a) For the purpose of determining compliance with RSA 151 and He-P 804, as authorized by RSA 151:6 and RSA 151:6-a, the licensee shall admit and allow any department representative at any time to inspect the following:

- (1) The licensed premises;
- (2) All programs and services provided by the ALR-RC; and
- (3) Any records required by RSA 151 and He-P 804.

(b) The department shall conduct an inspection to determine full compliance with RSA 151 and He-P 804 prior to:

- (1) The issuance of an initial license;
- (2) A change in ownership, except as allowed by He-P 804.08(j)(1);
- (3) A change in the physical location of the ALR-RC;
- (4) A change in the licensing classification, as defined in He-P 804.03(ah);
- (5) An increase in the number of beds;
- (6) Occupation of space after construction, renovations or alterations; or
- (7) The renewal of a license.

(c) In addition to (b) above, the department shall conduct an inspection to verify the implementation of any POC accepted or issued by the department as part of an annual inspection, or as a follow-up inspection focused on confirming the implementation of a POC.

(d) A notice of deficiencies shall be issued when, as a result of any inspection, the department determines that the ALR-RC is in violation of any of the provisions of He-P 804 or RSA 151.

(e) If deficiencies were cited, the licensee shall submit a POC, in accordance with He-P 804.12(c).

#### He-P 804.10 Waivers.

(a) Applicants or licensees seeking waivers of specific rules in He-P 804 shall submit a written request for a waiver to the commissioner that includes:

- (1) The specific reference to the rule for which a waiver is being sought;
- (2) A full explanation of why a waiver is necessary;
- (3) A full explanation of alternatives proposed by the applicant or license holder, which shall be equally as protective of public health and residents as the rule from which a waiver is sought; and
- (4) The period of time for which the waiver is sought.

(b) A waiver shall not exceed 12 months or the current license expiration date.

(c) A request for waiver shall be granted if the commissioner determines that the alternative proposed by the applicant or licensee:

- (1) Meets the objective or intent of the rule;
- (2) Does not negatively impact the health, safety or well-being of the residents; and
- (3) Does not affect the quality of resident services.

(d) The licensee's subsequent compliance with the alternatives approved in the waiver shall be considered equivalent to complying with the rule from which waiver was sought.

(e) Waivers shall not be transferable.

(f) When a licensee wishes to renew the waiver beyond the approved period of time, the licensee shall apply for a new waiver by submitting the information required by (a) above:

- (1) When the licensee submits its application for license renewal pursuant to He-P 804.06(b) and (c); or
- (2) At least 15 days prior to the expiration of the waiver if the waiver expires on a date other than the expiration date of the licensing certificate.

(g) The request to renew a waiver shall be subject to (b) through (f) above.

#### He-P 804.11 Complaints.

(a) The department shall investigate complaints that allege:

- (1) A violation of RSA 151 or He-P 804;
- (2) That an individual or entity is operating as an ALR-RC without being licensed; or
- (3) That an individual or entity is advertising or otherwise representing the ALR-RC as having or performing services which they are not licensed to provide, pursuant to RSA 151:2, III.

(b) When practicable the complaint shall be in writing and contain the following information:

- (1) The name and address of the ALR-RC, or the alleged unlicensed individual or entity;
- (2) The name, address and telephone number of the complainant; and
- (3) A description of the situation that supports the complaint and the alleged violation(s) of RSA 151 or He-P 804.

(c) For a licensed ALR-RC the department shall:

(1) Provide written notification of the results of the investigation to the licensee along with an inspection report if deficiencies were found as a result of the investigation; and

(2) Notify any other federal, state or local agencies of suspected violations of their statutes or rules based on the results of the investigation, as appropriate.

(d) If the department determines that the complaint is unfounded or does not violate any statutes or rules, the department shall notify the licensee in writing and take no further action.

(e) If the inspection results in deficiencies being cited, the licensee shall be required to submit a POC in accordance with He-P 804.12(c).

(f) For the unlicensed individual or entity, subsequent to inspection, the department shall provide written notification to the owner or person responsible that includes:

(1) The date of inspection;

(2) The reasons for the inspection; and

(3) Whether or not the inspection resulted in a determination that the services being provided require licensing under RSA 151:2, IV.

(g) In accordance with RSA 151:7-a, II, the owner or person responsible shall be allowed 7 days from the date of receipt of the notice required by (f) above to respond to a finding that they are operating without a license or submit a completed application for a license.

(h) If the owner of an unlicensed facility does not comply with (g) above, or if the department does not agree with the owner's response, the department shall:

(1) Issue a written warning to immediately comply with RSA 151 and He-P 804; and

(2) Provide notice stating that the individual has the right to appeal the warning in accordance with RSA 151:7-a, III.

(i) Any person or entity who fails to comply after receiving a warning as described in (h) above shall be subject to an action by the department for injunctive relief under RSA 151:17.

(j) Complaint investigation files shall be confidential in accordance with RSA 151:13, and shall not be disclosed publicly, but shall be released by the department on written request only:

(1) To the department of justice when relevant to a specific investigation;

(2) To law enforcement when relevant to a specific criminal investigation;

(3) When a court of competent jurisdiction orders the department to release such information; or

(4) In connection with an adjudicative proceeding relative to the licensee.

He-P 804.12 Administrative Remedies.



(a) The department shall impose administrative remedies for violations of RSA 151, He-P 804 or other applicable licensing rules, including:

- (1) Requiring a licensee to submit a POC;
- (2) Directed POCs upon a licensee;
- (3) Fines upon an unlicensed individual, an applicant or a licensee;
- (4) State monitoring;
- (5) Suspension of a license; or
- (6) Revocation of a license.

(b) When administrative remedies are imposed, the department shall provide written notice, as applicable, which:

- (1) Identifies each deficiency;
- (2) Identifies the specific remedy(s) that has been imposed; and
- (3) Provides the following information:
  - a. The right to a hearing in accordance with RSA 541-A and He-C 200 prior to imposition of a fine; and
  - b. The automatic reduction of a fine by 25% if the fine is paid within 10 days of the date on the written notice from the department and the deficiency has been corrected, or a POC has been accepted and approved by the department.

(c) A POC shall be developed and enforced in the following manner:

- (1) Upon receipt of a notice of deficiencies, the licensee shall submit a POC containing:
  - a. How the licensee intends to correct each deficiency;
  - b. What measures will be put in place, or what system changes will be made to ensure that the deficiency does not recur; and
  - c. The date by which each deficiency shall be corrected;
- (2) The licensee shall submit a POC to the department within 21 days of the date on the letter that transmitted the inspection report;
- (3) The department shall review each POC and accept each plan that:
  - a. Achieves compliance with RSA 151 and He-P 804;
  - b. Addresses all deficient practices as cited in the inspection report;

c. Prevents a new violation of RSA 151 or He-P 804 as a result of implementation of the POC; and

d. Specifies the date upon which the deficiencies will be corrected;

(4) If the POC is acceptable, the department shall issue a license certificate or provide written notification of acceptance of the POC, whichever applies;

(5) If the POC is not acceptable, the department shall notify the licensee in writing of the reason for rejecting the POC;

(6) The licensee shall develop and submit a revised POC within 14 days of the date of the written notification from the department that states the original POC was rejected, unless:

a. Within the 14 day period, the licensee requests an extension, either via telephone or in writing; and

b. The department grants the extension, based on the following criteria:

1. The licensee demonstrates that he or she has made a good faith effort to develop and submit the POC within the 14 day period but has been unable to do so; and

2. The department determines that the health, safety or well-being of a resident will not be jeopardized as a result of granting the extension;

(7) The revised POC shall comply with (1) above and be reviewed in accordance with (3) above;

(8) If the revised POC is not acceptable to the department or is not submitted within 14 days of the date of the written notification from the department that states the original POC was rejected, the licensee shall be subject to a directed POC in accordance with He-P 804.12(d) and a fine in accordance with He-P 804.12(f)(12);

(9) The department shall verify the implementation of any POC that has been submitted and accepted by:

a. Reviewing materials submitted by the licensee;

b. Conducting a follow-up inspection; or

c. Reviewing compliance during the next inspection;

(10) Verification of the implementation of any POC shall only occur after the date of completion specified by the licensee in the plan; and

(11) If the POC or revised POC has not been implemented by the completion date, at the time of the next inspection the licensee shall be:

a. Notified by the department in accordance with He-P 804.11(c); and

b. Issued a directed POC in accordance with He-P 804.12(d) and a fine in accordance with He-P 804.12(f)(13).

(d) The department shall develop and impose a directed POC that specifies corrective actions for the applicant or licensee to implement when:

- (1) As a result of an inspection, deficiencies were identified that require immediate corrective action to protect the health and safety of the residents and personnel;
- (2) A revised POC is not submitted within 14 days of the written notification from the department; or
- (3) A revised POC submitted by the licensee has not been accepted.

(e) If at the time of the next inspection the directed POC referenced in (d) above has not been implemented by the completion date stated in the directed POC, the department shall, as appropriate:

- (1) Impose a fine;
- (2) Deny the application for a renewal of a license; or
- (3) Revoke the license in accordance with He-P 804.13.

(f) The department shall impose fines as follows:

- (1) For a failure to cease providing unlicensed services after being notified by the department of the need for a license, in violation of RSA 151:2, the fine shall be \$2000.00 for an applicant or unlicensed provider;
- (2) For a failure to cease operations after a denial of a license or after receipt of an order to cease and desist immediately, in violation of RSA 151:2 and RSA 541-A:30, the fine for an applicant, unlicensed provider or a licensee shall be \$2000.00;
- (3) For advertising services or otherwise representing themselves as having a license to provide services that they are not licensed to provide, in violation of RSA 151:2 III, the fine for an applicant, licensee or unlicensed provider shall be \$500.00;
- (4) For a failure to transfer a resident whose needs exceeds the services or programs provided by the ALR-RC after being directed by the department to transfer the resident, in violation of RSA 151:5-a the fine for a licensee shall be \$500.00;
- (5) For admission of a resident whose needs at the time of admission exceed the services or programs authorized by the ALR-RC licensing classification, in violation of RSA 151:5-a, II and He-P 804.15(a) and (b), the fine for a licensee shall be \$1000.00;
- (6) For a failure to comply with the directives of a warning issued by the department in violation of RSA 151:7-a and He-P 804.11(i), the fine for an unlicensed provider or a licensee shall be \$500.00;
- (7) For a failure to submit a renewal application for a license prior to the expiration date, in violation of He-P 804.06(b), the fine for a licensee shall be \$100.00;

- (8) For a failure to notify the department prior to a change of ownership, in violation of He-P 804.08(a)(1), the fine for a licensee shall be \$250.00;
- (9) For a failure to notify the department prior to a change in the physical location, in violation of He-P 804.08(a)(2), the fine for a licensee shall be \$500.00;
- (10) For a refusal to allow access by the department to the ALR-RC's premises, programs, services or records, in violation of He-P 804.09(a), the fine for an applicant, unlicensed individual or licensee shall be \$2000.00;
- (11) For refusal to cooperate with the inspection or investigation conducted by the department the fine shall be \$ 2000.00.
- (12) For a failure to submit a POC or revised POC, within 21 or 14 days, respectively, of the date on the letter that transmits the inspection report, in violation of He-P 804.12(c)(2) and (6), the fine for a licensee shall be \$100.00, unless an extension has been requested and granted under He-P 804.10;
- (13) For a failure to implement any POC that has been accepted or issued by the department, in violation of He-P 804.12(c)(11), the fine for a licensee shall be \$1000.00;
- (14) For a failure to establish, implement or comply with licensee policies, as required by He-P 804.14(b), after being notified in writing by the department of the need to establish, implement or comply with licensee policies, the fine for a licensee shall be \$500.00;
- (15) For a failure to provide services or programs required by the licensing classification and specified by He-P 804.14(c), the fine for a licensee shall be \$500.00;
- (16) For exceeding capacity, in violation of He-P 804.14(n), the fine for a licensee shall be \$500.00;
- (17) For falsification of information contained on an application or of any records required to be maintained for licensing, in violation of He-P 804.14(t), the fine for an applicant or licensee shall be \$500.00 per offense;
- (18) For a failure to meet the needs of the resident, in violation of He-P 804.15(a)(2), the fine for a licensee shall be \$500.00;
- (19) For employing an administrator or other personnel who do not meet the qualifications for the position, without having a waiver granted by the department in accordance with He-P 804.10, in violation of He-P 804.18(k)-(l), the fine for a licensee shall be \$500.00;
- (20) If a deficiency is cited for which a fine was previously imposed within 2 years of the original deficiency, the fine for that repeat citation shall be \$1000.00, or double the original fine, whichever is higher, but not to exceed \$2000;
- (21) Each day that the individual or licensee continues to be in violation of the provisions of RSA 151 or He-P 804 shall constitute a separate violation and shall be subject to fines in accordance with He-P 804.12.

(22) If the applicant or licensee is making good faith efforts to comply with (4) and (5) above, as verified by documentation or other means, the department shall not issue a fine.

(g) Payment of any imposed fine to the department shall meet the following requirements:

(1) Payment shall be made in the form of check or money order made payable to the “Treasurer, State of New Hampshire” or cash in the exact amount due; and

(2) Cash, money order, or certified check shall be required when an applicant or licensee has issued payment to the department by check, and such check was returned for insufficient funds.

(h) The department shall impose state monitoring when the facility has demonstrated poor compliance in areas that may impact the health, safety, welfare or well-being of residents.

#### He-P 804.13 Enforcement Actions and Hearings.

(a) Prior to taking enforcement action against an applicant or licensee, the department shall send to the applicant or licensee a written notice that sets forth:

(1) The reasons for the proposed action;

(2) The action to be taken by the department; and

(3) The right of an applicant or licensee to a hearing in accordance with RSA 151:8, as applicable.

(b) The department shall deny an application, suspend or revoke a license if:

(1) An applicant or a licensee violated a provision of RSA 151 or He-P 804 which poses a threat to the health, safety or well-being of a resident;

(2) An applicant or licensee has failed to pay an administrative fine imposed by the department;

(3) An applicant or licensee had a check returned to the department for insufficient funds and has not re-submitted the outstanding fee in the form of cash, money order or certified check;

(4) After being notified of and given an opportunity to supply missing information, the applicant or licensee fails to submit an application that meets the requirements of He-P 804.04;

(5) The applicant, licensee or any representative or employee of the applicant or licensee:

a. Provides false or misleading information to the department;

b. Prevents, interferes or fails to cooperate with any inspection or inspection conducted by the department; or

c. Fails to provide requested files or documents to the department;

(6) The licensee failed to implement or continue to implement a POC that has been accepted or imposed by the department in accordance with He-P 804.12(c)(11) and 12(e);

- (7) The licensee is cited a third time under RSA 151 or He-P 804 for the same violation within the last 5 inspections;
  - (8) A licensee, or its corporate officers, has had a license revoked and submits an application during the 5 year prohibition period specified in (i) below;
  - (9) Upon inspection, the applicant's premise is not in compliance with RSA 151 or He-P 804;
  - (10) The department makes a determination that the applicant, administrator, licensee or a household member has been convicted of or adjudicated for a sexual assault or other violent crime, or fraud, or a finding of abuse, neglect or exploitation in this or any other state, or poses a threat to the health, safety or well-being of a resident; or
  - (11) The applicant or licensee fails to employ a qualified administrator.
- (c) An applicant or licensee shall have 30 days after receipt of the notice of enforcement action to request a hearing to contest the action.
- (d) If a written request for a hearing is not made pursuant to (c) above, the action of the department shall become final.
- (e) In accordance with RSA 541:A-30, III the department shall order the immediate suspension of a license and the cessation of operations when it finds that the health, safety or welfare of a resident is in jeopardy and requires emergency action.
- (f) If an immediate suspension is upheld the licensee shall not resume operating until the department determines through inspection that compliance with RSA 151 and He-P 804 is achieved.
- (g) RSA 541-A shall govern further appeals of department decisions under this section.
- (h) When an ALR-RC's license has been denied or revoked, the applicant, licensee or administrator shall not be eligible to apply for a license or be employed as an administrator for at least 5 years if the denial or revocation specifically pertained to their role in the program.
- (i) The 5 year period referenced in (h) above shall begin on:
- (1) The date of the department's decision to revoke or deny the license, if no request for an administrative hearing is requested; or
  - (2) The date an order is issued upholding the action of the department, if a request for a hearing is made and a hearing is held.
- (j) Notwithstanding (i) above, the department shall consider an application submitted after the decision to revoke or deny becomes final if the applicant demonstrates that circumstances have changed to the extent that the department now has good cause to believe that the applicant has the requisite degree of knowledge, skills and resources necessary to maintain compliance with the provisions of RSA 151 and He-P 804.
- (k) No ongoing enforcement action shall preclude the imposition of any remedy available to the department under RSA 151, RSA 541-A or He-P 804.

He-P 804.14 Duties and Responsibilities of the Licensee.

(a) The licensee shall comply with all relevant federal, state and local laws, rules, codes and ordinances as applicable.

(b) The licensee shall have written policies and procedures setting forth:

- (1) The rights and responsibilities of admitted residents in accordance with the patients bill of rights; and
- (2) The policies described in He-P 804.14(r), He-P 804.16(b)(12), and He-P 804.19(d).

(c) The licensee shall provide the following core services:

- (1) Health and safety services to minimize the likelihood of accident or injury, with protective care and oversight provided 24 hours a day regarding:
  - a. The residents' functioning, safety and whereabouts; and
  - b. The residents' health status, including the provision of intervention as necessary or required;
- (2) Emergency response and crisis intervention;
- (3) Medication services in accordance with He-P 804.17;
- (4) Food services in accordance with He-P 804.21;
- (5) Housekeeping, laundry and maintenance services;
- (6) Assistance in arranging medical and dental appointments, which may include transportation to and from such appointments and reminding the residents of the appointments; and
- (7) Supervision of residents when required to offset cognitive deficits that may pose a risk to self or others if the resident is not supervised.

(d) The licensee shall have a system to regularly identify the ALR-RC's census, including times when a resident is absent from the ALR-RC.

(e) The licensee shall provide on site activities and access to community activities designed to meet the individual interests of residents to sustain and promote physical, intellectual, social and spiritual well-being of all residents.

(f) The licensee shall:

- (1) Make available basic supplies necessary for residents to maintain grooming and personal hygiene, such as soap, shampoo, toothpaste, toothbrush and toilet paper; and
- (2) Identify in the admission agreement the cost, if any, of basic supplies for which there will be a charge.

(g) The licensee shall educate personnel about the needs and services required by the residents under their care.

(h) Physical or chemical restraints shall only be used in the case of an emergency, pursuant to by RSA 151:21, IX.

(i) Immediately after the use of a physical or chemical restraint, the resident's licensed practitioner, guardian or agent, if any, and the department shall be notified of the use of restraints.

(j) The use of all mechanical restraints, as defined in He-P 804.03(ai), shall be prohibited.

(k) An ALR-RC may use door alarm systems that notify personnel when a resident leaves the ALR-RC, provided that the alarm does not stop the resident from free movement in or out of the ALR-RC.

(l) Licensees shall:

(1) Contact the department within 24 hours by telephone, fax or e-mail, and in writing within 72 hours if the initial notice was made by telephone or if additional information is available, to report an unusual incident, as defined in He-P 804.03(bp), and provide the following information:

- a. The ALR-RC name;
- b. A description of the incident, including identification of injuries, if applicable;
- c. The name of the licensee(s) or personnel involved in, witnessing or responding to the unusual incident;
- d. The name of resident(s) involved in or witnessing the unusual incident;
- e. The date and time of the unusual incident;
- f. The action taken in direct response to the unusual incident, including any follow-up;
- g. If medical intervention was required, by whom and the date and time;
- h. Whether the resident's guardian or agent, if any, or personal representative was notified;
- i. The signature of the person reporting the unusual incident; and
- j. The date and time the resident's licensed practitioner was notified;

(2) Immediately contact the department by telephone, fax or e-mail the information required by (1) above, and in writing within 72 hours, if the initial notice was made by telephone or if additional information is available, of the unanticipated death of any resident who was living as the ALR-RC or the death of any resident who dies within 10 days of an unusual incident as defined by He-P 804.03(bp);

(3) Immediately notify the local police department, the department, guardian, agent or personnel representative, if any, when a resident has an unexplained absence after the licensee has searched the building and the grounds of the ALR-RC; and



- (4) Submit additional information if required by the department.
- (m) The licensee shall comply with the patient's bill of rights as set forth in RSA 151:19-30.
- (n) The licensee shall not exceed the maximum number of residents or beds licensed by the department, unless authorized by the department, such as during an emergency.
- (o) The licensee shall give a resident written notice of the following:
  - (1) For an increase in the cost or fees for any ALR-RC services, 30 days advanced notice; or
  - (2) For an involuntary change in room or bed location, 14 days advanced notice, unless the change is required to protect the health, safety and well-being of the resident or other residents, in such case the notice shall be as soon as practicable.
- (p) In addition to the posting requirements specified in RSA 151:29, the licensee shall post the following documents in a public area:
  - (1) The current license certificate issued in accordance with RSA 151:2;
  - (2) All inspection reports for the last 12 months in accordance with He-P 804.09(d) and He-P 804.11(c)(1);
  - (3) A copy of the patient's bill of rights specified by RSA 151:21;
  - (4) A copy of the licensee's policies and procedures relative to the implementation of resident's rights and responsibilities as required by RSA 151:20;
  - (5) Information on how to contact the office of the long-term care ombudsman; and
  - (6) The licensee's evacuation floor plan identifying the location of, and access to all fire exits.
- (q) The licensee shall determine whether smoking will be allowed at the ALR-RC.
- (r) If smoking is to be allowed, the licensee shall develop and implement smoking policies and designate smoking areas in accordance with RSA 155:66, RSA 155:68 and RSA 155:69 and He-P 804.25(f).
- (s) If the licensee holds or manages a resident's funds or possessions it shall first receive written authorization in accordance with RSA 151:24 and RSA 151:21, VII, and such funds shall not be used for the benefit of the licensee, other residents or other household members.
- (t) The licensee shall not falsify any documentation required by law or provide false or misleading information to the department.
- (u) The licensee shall respond to a notice of deficiencies by providing a POC in accordance with He-P 804.12(c).
- (v) The licensee shall comply with all conditions of warnings and administrative remedies issued by the department and all court orders.

He-P 804.15 Resident Admission Criteria, Temporary Absence, Transfer, and Discharge Criteria.

(a) The licensee shall only admit an individual or retain a resident:

- (1) Whose needs are compatible with the care, services and programs offered by the ALR-RC and authorized by its license;
- (2) Whose needs can be met by the personnel of the ALR-RC;
- (3) Who remains mobile;
- (4) Who can self evacuate;
- (5) Who only requires personal assistance, care and/or services;
- (6) Who can perform his or her own glucose monitoring, if applicable;
- (7) Who does not require medical, nursing or rehabilitative care and or services except as allowed by (b) or (c) below;
- (8) Who does not require a nursing or multi-disciplinary care plan, except as allowed by (b) or (c) below; and
- (9) Who does not require special equipment for transfers.

(b) The ALR-RC shall retain a resident that requires medical, nursing or rehabilitative care or services only if the following conditions are met:

- (1) The resident does not require these services for longer then 21 visits per incident that requires medical, nursing or rehabilitative care or services, unless the department authorizes additional visits in accordance with He-P 804.10;
- (2) The resident is mobile and capable of self-evacuation; and
- (3) The resident receives the services from onsite visits by the resident's licensed practitioner or a NH licensed home health agency if a licensed nurse or licensed nurse consultant is not employed by the ALR-RC.

(c) A resident who develops a condition that requires hospice care following admission to an ALR-RC may receive services from a New Hampshire licensed home hospice provider, provided that the licensee can evacuate the resident without jeopardizing the other residents or personnel.

(d) If the resident is receiving medical, nursing or rehabilitative care and/or services pursuant to (b) or (c) above, the individual providing the care and services shall:

- (1) Provide the ALR-RC with an assessment of the resident's needs;
- (2) Provide the ALR-RC with a care plan and documentation of all care and services provided to the resident while at the ALR-RC;
- (3) Make (1) and (2) above available to all direct care staff; and

(4) Maintain documentation of (1) and (2) above in the resident's record.

(e) If the nursing assessment indicates a need for nursing care or a nursing care plan, the resident shall be ineligible for care and services at the ALR-RC, unless it is for short term care as described in (b) and (c) above.

(f) A licensee shall not deny admission to any person because that person does not have a guardian or an advanced directive, such as a living will or durable power of attorney for health care, established in accordance with RSA 137-H or RSA 137-J.

(g) The ALR-RC shall hold the resident's bed open during a temporary absence, in accordance with RSA 151:25.

(h) The resident shall be transferred or discharged only as allowed under RSA 151:19, VII, RSA 151:21, V, or in accordance with the provisions of RSA 151:26.

He-P 804.16 Required Services.

(a) The licensee shall provide administrative services that include the appointment of an administrator who:

- (1) Is responsible for the day-to-day operations of the ALR-RC;
- (2) Works no less than 35 hours per week at the ALR-RC, which may include day, evening, night and weekend hours;
- (3) Meets the requirements of He-P 804.18(k) and (l); and
- (4) Designates, in writing, a staff member who shall assume the responsibilities of the administrator in his or her absence.

(b) At the time of application for admission, the licensee shall provide the resident a written copy of the residential service agreement that includes all of the elements required under RSA 161-J:4, as well as the following information:

- (1) The basic daily, weekly and monthly fee;
- (2) A list of the core services required by He-P 804.14(c) that are covered by the basic fee;
- (3) Information regarding the timing and frequency of cost of care increases;
- (4) The time period covered by the admissions contract;
- (5) The resident acuity level that the ALR-RC can care for;
- (6) The role that the ALR-RC will take in discharge planning;
- (7) The maximum length of time that medical, nursing or rehabilitative care and or services can be provided at the ALR-RC as allowed by He-P 804.15(b) and (c);
- (8) The ALR-RC's house rules;

- (9) The grounds for immediate termination of the agreement, pursuant to RSA 151:21, V;
- (10) The ALR-RC's responsibility for resident discharge planning;
- (11) Information regarding care, services or supplies not provided in the core services, to include:
  - a. The availability of services;
  - b. The ALR-RC's responsibility for arranging services; and
  - c. The fee and payment for services, if known;
- (12) The licensee's policies and procedures regarding:
  - a. The provision of transportation;
  - b. The provision of third party services, such as a hairdresser or cable television;
  - c. Monitoring third party services contracted directly by the resident and provided on the ALR-RC premises;
  - d. Handling of resident funds pursuant to RSA 151:24 and He-P 804.14(s);
  - e. Bed hold, in compliance with RSA 151:25;
  - f. Storage and loss of the resident's personal property; and
  - g. Smoking;
- (13) The licensee's medication management services;
- (14) The list of grooming and personal hygiene supplies provided by the ALR-RC as part of the basic daily, weekly or monthly rate;
- (15) A copy of the most current version of the patients' bill of rights under RSA 151: 21 and the ALR-RC's policy and procedure for implementing the bill of rights pursuant to RSA 151:20, II;
- (16) A copy of the resident's right to appeal an involuntary transfer or discharge under RSA 151:26, II(a)(5);
- (17) The ALR-RC's policy and procedure for handling reports of abuse, neglect or exploitation which shall be in accordance with RSA 161-F:46 and RSA 169-C:29;
- (18) Information on accessing the long-term care ombudsman;
- (19) Information on advanced directives; and
- (20) Whether or not personnel are trained in cardiopulmonary resuscitation (CPR), first aid or both.

(c) The ALR-RC shall assess each resident's needs using the most recent version of the department's approved RAT.

(d) All personnel who administer the RAT shall be trained to complete the RAT by the department or entities listed in RSA 151:5-a, III.

(e) The assessment described in (c) above shall:

- (1) Be completed in consultation with the resident and guardian or agent, if any;
- (2) Be completed no more than 30 days prior to admission to the ALR-RC; and
- (3) Be repeated every 6 months or after any significant change as defined in He-P 804.03(bh).

(f) If the RAT identifies the need for a nursing assessment, the nursing assessment shall be completed within 72 hours of the completion of the RAT.

(g) The nursing assessment, completed in accordance with (f) above, shall include:

- (1) A medication review;
- (2) A review of the resident's clinical record; and
- (3) Assessment for pain, vital signs, physical, cognitive, mental and behavioral status, as well as an assessment as to how the resident is psychologically adapting to his or her social environment.

(h) If the nursing assessment indicates a need for nursing care, the resident shall be ineligible for care and services at the ALR-RC, unless it is for short term care as described in He-P 804.15(b) and (c).

(i) If the nursing assessment completed in accordance with (g) above is completed by a licensed practical nurse (LPN), the assessment shall be reviewed and co-signed by the registered nurse (RN) or physician that is supervising the LPN prior to implementation.

(j) A care plan as defined in He-P 804.03(k) shall be developed and revised based on needs identified by the RAT.

(k) The care plan shall include:

- (1) The date any specific problem or need was identified;
- (2) A description of the problem or need;
- (3) The goal or objective of the plan;
- (4) The action or approach to be taken;
- (5) The person(s) or position responsible for implementing the action or approach; and
- (6) The date of reevaluation, review, or resolution.

(l) The care plan shall be:

- (1) Completed within 24 hours of the resident's admission;
- (2) Reviewed and updated within 24 hours following the completion of each future assessment;
- (3) Made available to personnel who assist residents in the implementation of the plan; and
- (4) Inclusive of the needs identified by (h) above.

(m) A care plan shall not be required if the resident does not require protective care or oversight.

(n) For individuals with care plans, progress notes shall be written at least every 90 days.

(o) The progress notes referenced in (n) above shall include, at a minimum:

- (1) Care plan outcomes;
- (2) Changes in the resident's physical, functional and mental abilities;
- (3) Changes in behavior, such as eating habits, sleeping pattern, and relationships;
- (4) Summary of protective care that has been provided; and
- (5) Summary of assistance provided with ADLs.

(p) For individuals receiving short term medical, nursing or rehabilitative care and/or services or hospice care, a nursing care plan shall:

- (1) Be completed within 24 hours of the nursing assessment;
- (2) Be updated following the completion of all future nursing assessments;
- (3) Be available to personnel who assist residents in the implementation of the care plan;
- (4) Address the needs identified in the nursing assessment;
- (5) Include the date the problem or need was identified;
- (6) Identify the resident goal or approach to be taken; and
- (7) Include the date of reevaluation and the name of the responsible person.

(q) For individuals receiving short term medical, nursing or rehabilitative care and/or services or hospice care, progress notes shall be written at every visit and include at a minimum:

- (1) Nursing care plan outcomes;
- (2) Changes in the resident's physical, functional and mental abilities;
- (3) Changes in behavior, such as eating habits, sleeping pattern, and relationships;

(4) Summary of care and/or services that were provided; and

(5) Summary of assistance provided with ADLs.

(r) At the time of a resident's admission, the licensee shall obtain orders from a licensed practitioner for medications, prescriptions and diet, as applicable.

(s) The licensee shall have each resident obtain a health examination by a licensed practitioner within 30 days prior to admission or within 72 hours following admission to the ALR-RC.

(t) The health examination referenced in (r) above shall include:

(1) Diagnoses, if any;

(2) The medical history;

(3) Medical findings, including the presence or absence of communicable disease;

(4) Vital signs;

(5) Prescribed and over-the-counter medications;

(6) Allergies; and

(7) Dietary needs.

(u) Each resident shall have at least one health examination every 12 months, unless the licensed practitioner determines that an annual physical examination is not necessary and specifies in writing an alternative time frame, or the resident refuses in writing.

(v) A resident may refuse all care and services.

(w) When a resident refuses care or services that could result in a threat to the resident's health, safety or well-being, or that of others, the licensee or the licensee's designee shall:

(1) Inform the resident of the potential consequences of their refusal;

(2) Notify the licensed practitioner and guardian, if any, of the resident's refusal of care; and

(3) Document in the resident's record the refusal of care and the resident's reason for the refusal.

(x) The licensee shall maintain an information data sheet in the resident's record and promptly give a copy to emergency medical personnel in the event of an emergency transfer to another medical facility.

(y) The information data sheet referenced in (x) above shall include:

(1) Full name and the name the resident prefers, if different;

(2) Name, address and telephone number of the resident's next of kin, guardian or agent, if any;

- (3) Diagnosis;
  - (4) Medications, including last dose taken and when the next dose is due;
  - (5) Allergies;
  - (6) Functional limitations;
  - (7) Date of birth;
  - (8) Insurance information;
  - (9) Advanced directives; and
  - (10) Any other pertinent information not specified in (1)-(9) above.
- (z) Accidents, injuries and unusual incidents shall be documented and include:
- (1) The date and time of the occurrence;
  - (2) A description of the occurrence, including identification of injuries, if applicable;
  - (3) The actions taken;
  - (4) The signature of the person reporting the unusual incident; and
  - (5) If medical intervention was required, the date and time that the emergency contact person and guardian or agent, if any, and the licensed practitioner were notified.

He-P 804.17 Medication Services.

- (a) The ALR-RC shall ensure that residents receive all medications in accordance with the orders of a licensed practitioner or other professional with prescriptive powers.
- (b) Medications, treatments and diets ordered by a licensed practitioner or other professional with prescriptive powers shall be available to give to the resident within 24 hours, or in accordance with the licensed practitioner's direction.
- (c) The licensee shall have a written policy and system in place instructing how to:
  - (1) Obtain any medication ordered for immediate use at the ALR-RC;
  - (2) Reorder medications for use at the ALR-RC;
  - (3) Receive and record new medication orders; and
  - (4) Report to the resident's licensed practitioner any adverse reactions and side effects to medications or medication errors, such as incorrect medications, within 24 hours of the adverse reaction or medication error, including documentation in the resident's file.



(d) For each prescription medication being taken by a resident, the licensee shall maintain one of the following:

- (1) The original written order in the resident's record, signed by a licensed practitioner or other professional with prescriptive powers; or
- (2) A copy of the original written order in the resident's record, signed by a licensed practitioner or other professional with prescriptive powers.

(e) Each medication order shall legibly display the following information:

- (1) The resident's name;
- (2) The medication name, strength, prescribed dose and route, if different then by mouth;
- (3) The frequency of administration;
- (4) The indications for usage for all medications that are used PRN; and
- (5) The dated signature of the ordering practitioner.

(f) For PRN medications the ordering practitioner or a pharmacist shall indicate, in writing, the indications for use and any special precautions, limitations and common side effects to the use of the medication that would require notification of the licensed practitioner, including the maximum allowed dose in a 24-hour period.

(g) Except for pharmaceutical samples, each prescription medication shall legibly display the following information unless it is an emergency medication as allowed by (ac) below:

- (1) The resident's name;
- (2) The medication name, strength, the prescribed dose and route of administration;
- (3) The frequency of administration;
- (4) The indications for usage of all PRN medications;
- (5) The date ordered;
- (6) The name of the prescribing practitioner; and
- (7) The expiration date of the medication(s).

(h) Pharmaceutical samples shall be used in accordance with the licensed practitioner's written order and labeled by the licensed practitioner with the resident's name.

(i) The label of all medication containers maintained in the ALR-RC shall match the current written orders of the licensed practitioner unless authorized by (l) or (af)(5) below.

(j) Only a pharmacist shall make changes to the label of a prescription medication container.

(k) Any change or discontinuation of medications taken at the ALR-RC shall be pursuant to a written order from a licensed practitioner or other professional with prescriptive powers.

(l) When the licensed practitioner or other professional with prescriptive powers changes the dose of a medication and personnel of the ALR-RC are unable to obtain a new prescription label:

(1) The original container shall be clearly and distinctly marked, for example, with a colored sticker that does not cover the pharmacy label, in a manner consistent with the ALR-RC's written procedure, indicating that there has been a change in the medication order;

(2) Personnel shall cross out the previous order on the daily medication record, indicating that the dose has been changed, and write the new order in the next space available on the medication record; and

(3) The change in dosage, without a change in prescription label as described in (1) and (2) above, shall be allowed for a maximum of 90 days from the date of the new medication order or until the medications in the marked container are exhausted or, in the case of PRN medications, until the expiration date on the container, whichever occurs first.

(m) Telephone or verbal orders for medications, treatments, and diets shall only be taken and immediately transcribed by licensed personnel as authorized by their practice act.

(n) ALR-RC's that do not have licensed personnel as described in (m) above on duty at the time an order for medications, treatments, and/or diets are to be given shall receive said order in written form with the licensed practitioner's signature and the date of the order.

(o) Faxes of signed orders or other electronic media with electronic signatures shall be acceptable to meet the requirements of (n) above.

(p) Over-the-counter medications shall be handled in the following manner:

(1) The licensee shall obtain written approval from the resident's licensed practitioner annually; and

(2) Over-the-counter medication containers shall be marked with the name of the resident using the medication and taken in accordance with the directions on the medication container or as ordered by a licensed practitioner.

(q) The medication storage area for medications not stored in the resident's room shall be:

(1) Locked and accessible only to authorized personnel;

(2) Clean and organized with adequate lighting to ensure correct identification of each resident's medication(s); and

(3) Equipped to maintain medication at the proper temperature.

(r) All medication at the ALR-RC shall be kept in the original containers as dispensed by the pharmacy and properly closed after each use except as authorized by (af)(5) below.

(s) Topical liquids, ointments, patches, creams, or powder forms of products shall be stored in such a manner that cross contamination with oral, otic, ophthalmic and parenteral products shall not occur.

(t) If controlled substances, as defined by RSA 318-B, are stored in a central storage area in the ALR-RC, they shall be kept in a separately locked compartment within the locked medication storage area accessible only to authorized personnel.

(u) The licensee shall develop and implement written policies and procedures regarding a system for maintaining counts of controlled drugs.

(v) Any contaminated, expired or discontinued medication shall be destroyed within 30 days of the expiration date, the end date of a licensed practitioner's orders or the medication becomes contaminated, whichever occurs first.

(w) Destruction of contaminated, expired or discontinued controlled drugs shall:

(1) Be accomplished in the presence of at least 2 people; and

(2) Be documented in the record of the resident for whom the drug was prescribed.

(x) Medication(s) may be returned to pharmacies for credit only as allowed by the law.

(y) When a resident is going to be absent from the ALR-RC at the time medication is scheduled to be taken, the medication container shall be given to the resident if the resident is capable of self-administering, as described in (ac) and (ad) below.

(z) If a resident is going to be absent from the ALR-RC at the time medication is scheduled to be taken and the resident is not capable of self-administration, the medication container shall be given to the person responsible for the resident while the resident is away from the ALR-RC.

(aa) Upon discharge or transfer, the licensee shall make the resident's current medications available to the resident and the guardian or agent, if any.

(ab) If a resident dies all medications utilized by the resident shall be destroyed in accordance with (w) above.

(ac) A written order from a licensed practitioner shall be required annually for any resident who is authorized to carry emergency medications, including but not limited to nitroglycerine and inhalers.

(ad) Residents shall receive their medications by one of the following methods:

(1) Self-administration of medication as allowed by (af) below;

(2) Self-directed medication administration as allowed by (ag) below;

(3) Self-administration of medication with supervision as allowed by (ah) and (ai) below; or

(4) Administered by a licensed nurse, medication nursing assistant (MNA) as defined in RSA 326-B:2, VI, or any other individuals authorized by law.

(ae) Medications shall not be administered to residents except as allowed by (af) below.

(af) For residents who self-administer medication as defined in He-P 804.03(bf), the licensee shall:

- (1) Obtain a written order from a licensed practitioner on an annual basis:
  - a. Authorizing the resident to self-administer medications without supervision;
  - b. Authorizing the resident to store the medications in their room; and
  - c. Identifying the medications that may be kept in the resident's room;
- (2) Evaluate the resident on a 6 month basis or sooner, based on a significant change in the resident, to ensure they maintain the physical and mental ability to self-administer;
- (3) Have the resident store the medication(s) in his or her room by keeping them in a locked drawer or container to safeguard against unauthorized access and making sure that this arrangement will maintain the medications at proper temperatures;
- (4) If a resident requests, allow the resident's medication to be placed in a central locked storage area provided by the ALR-RC;
- (5) Have a copy of the key to access the locked medication storage area in the resident's room;
- (6) Allow the resident to fill and utilize a medication system that does not require that medication remain in the container as dispensed by the pharmacist; and
- (7) Except as provided for in (4) above, not be responsible, in any way, for management or control of the resident's medications.

(ag) The licensee shall allow the resident to self-direct administration of medications as defined in He-P 804.03(bh) if the resident:

- (1) Has a physical limitation due to a diagnosis that prevents the resident from self-administration;
- (2) Receives evaluations every 6 months or sooner, based on a significant change in the resident, to ensure the resident maintains the physical and mental ability to self-direct administration of medications;
- (3) Obtains an annual written verification of the resident's physical limitation and self-directing capabilities from the resident's licensed practitioner and requests the ALR-RC to file the verification in their resident record; and
- (4) Verbally directs personnel to:
  - a. Assist the resident with preparing the correct dose of medication by pouring, applying, crushing, mixing or cutting; and
  - b. Assist the resident to apply, ingest or instill the ordered dose of medication.

(ah) If a resident self-administers medication with supervision, as defined in He-P 804.03(bg), personnel shall be permitted to:

- (1) Remind the resident to take the correct dose of his or her medication at the correct time;
- (2) Place the medication container within reach of the resident;
- (3) Remain with the resident to observe the resident taking the appropriate amount and type of medication as ordered by the licensed practitioner;
- (4) Record on the resident's daily medication record that they have supervised the resident taking his or her medication; and
- (5) Document in the resident's record any observed or reported side effects, adverse reactions, and refusal to take medications and/or medications not taken.

(ai) If a resident self-administers medication with supervision, personnel shall not physically handle the medication in any manner.

(aj) Except for those residents who self-administer medication, the licensee shall maintain a written record for each medication taken by a resident at the ALR-RC that contains the following information:

- (1) Any allergies or adverse reactions to medications;
- (2) The medication name, strength, dose, frequency and route of administration;
- (3) The date and the time the medication was taken;
- (4) The signature, identifiable initials and job title of the person who administers, supervises or assists the resident taking medication;
- (5) For PRN medications, the reason the resident required the medication and the effect of the PRN medication; and
- (6) Documented reason for any medication refusal or omission.

(ak) Prior to supervising medication administration, personnel who are not licensed practitioners or nurses but who assist a resident with self administration with supervision or self-directed administration shall complete, at a minimum, a 4-hour medication supervision education program covering both prescription and non-prescription medication.

(al) The medication supervision education program shall be taught by a licensed nurse, licensed practitioner or pharmacist, or other person who has undergone such training by a licensed nurse, licensed practitioner or pharmacist, and shall be conducted either in person or through other means such as electronic media.

(am) The medication supervision education program required by (ak) above shall include:

- (1) Infection control and proper hand washing techniques;
- (2) The 5 rights relative to medication, which are:

- a. The right resident;
  - b. The right medication;
  - c. The right dose;
  - d. Medication administered at the right time; and
  - e. Medication administered via the right route;
- (3) Documentation requirements;
  - (4) General categories of medications such as antihypertensives or antibiotics;
  - (5) Desired effects and potential side effects of medications; and
  - (6) Medication precautions and interactions.

(an) The administrator may accept documentation of training required by (ak) above if it was previously obtained by the applicant for employment at another licensed ALR-RC.

(ao) An ALR-RC shall not use an emergency drug kit or non-prescription stock medications.

He-P 804.18 Personnel.

(a) The licensee shall ensure that sufficient numbers of qualified personnel are present in the ALR-RC to meet the needs of residents at all times.

(b) For those ALR-RCs licensed for 16 or fewer beds, an awake personnel member shall not be required during the night if:

- (1) There is a communication system whereby the resident can contact and awaken the sleeping personnel member via an intercom or other communication system in the personnel member's room;
- (2) The ALR-RC has residents with dementia, and the licensee has installed a wander prevention system that will awaken the sleeping personnel member in the member's room;
- (3) All residents:
  - a. Require nothing more than occasional reminding or cueing;
  - b. Require nothing more than verbal prompting for mobility and evacuation issues;
  - c. Have no acute medical needs or ongoing nursing needs; and
  - d. Have no history of being verbally or physically abusive; and
- (4) The ALR-RC meets the needs of the residents at all times as identified in their RAT and care plan.

(c) For those ALR-RCs licensed for 17 or more beds, at least one awake personnel member shall be on duty at all times while residents are in the ALR-RC.

(d) All applicants for a license shall obtain a criminal record check from the New Hampshire Department of Safety in accordance with RSA 151:3-c.

(e) For all applicants for employment at an ALR-RC and all household members 18 years of age or older, the licensee shall:

- (1) Obtain and review a criminal records check from the New Hampshire Department of Safety; and

- (2) Review the results of the criminal records check in accordance with (f) below and verify the qualifications of all applicants prior to employment.

(f) Unless a waiver is granted in accordance with (g) below, the licensee shall not offer employment for any position or allow a household member to continue to reside in the residence if the individual:

- (1) Has been convicted for sexual assault, other violent crime, assault, fraud, abuse, neglect or exploitation;

- (2) Has been found by the department or any administrative agency in this or any other state for assault, fraud, abuse, neglect or exploitation of any person; or

- (3) Otherwise poses a threat the health, safety or well-being of the residents.

(g) The department shall grant a waiver of (f) above if, after reviewing the underlying circumstances, it determines that the person does not pose a current threat to the health, safety or well being of residents.

(h) If the information identified in (f) above regarding any employee is learned after the person is hired or an individual becomes a household member, the licensee shall immediately notify the department.

(i) The department shall review the information in (f) above and notify the licensee that the individual can no longer be employed if, after investigation, it determines that the individual poses a threat to the health, safety or well-being of a resident.

(j) For an ALR-RC licensed for 17 or more beds, all administrators appointed after the effective date of these rules shall be at least 21 years of age and have one of the following combinations of education and experience:

- (1) A bachelor's degree from an accredited institution and one year of experience working in a health related field;

- (2) A New Hampshire license as an RN, with at least 6 months experience working in a health related field;

- (3) An associate's degree from an accredited institution plus 2 years experience in a health related field; or

- (4) A New Hampshire license as an LPN, with at least one years experience working in a health related field.
- (k) For an ALR-RC licensed for 16 or fewer beds, all administrators appointed after the effective date of these rules shall be at least 21 years of age and have one of the following combinations of education and experience:
- (1) A bachelor's degree from an accredited institution and 6 months of experience working in a health related field;
  - (2) A New Hampshire license as an RN;
  - (3) An associate's degree from an accredited institution plus one years experience in a health related field;
  - (4) A New Hampshire license as an LPN, with at least one years experience working in a health related field; or
  - (5) Be a high school graduate or have a GED with 2 years experience in a health related field with at least one year as direct care personnel in a long-term care setting within the last 5 years.
- (l) All administrators shall obtain and document 12 hours of continuing education related to the operation and services of the ALR-RC each annual licensing period, in accordance with (s) and (t) below.
- (m) All direct care personnel shall be at least 18 years of age unless they are a licensed nursing assistant working under the supervision of a nurse, in accordance with Nur 700.
- (n) The licensee shall inform personnel of the line of authority at the ALR-RC.
- (o) All personnel shall follow the orders of the licensed practitioner for each resident and encourage residents to follow the practitioner's order.
- (p) Prior to having contact with residents or food, personnel shall:
- (1) Submit to the licensee the results of a physical examination or a health screening and submit results of a 2-step tuberculosis (TB) test, Mantoux method, or other method approved by the Centers for Disease Control, conducted not more than 12 months prior to employment;
  - (2) Be allowed to work while waiting for the results of the second step of the TB test when the results of the first step are negative for TB; and
  - (3) Comply with the requirements of the Centers for Disease Control Guidelines for Preventing the Transmission of Tuberculosis in Health Facilities/Settings (2005) if the person has either a positive TB test, or has had direct contact or potential for occupational exposure to M. tuberculosis through shared air space with persons with infectious tuberculosis.
- (q) Personnel, volunteers or independent contractors hired by the licensee who will have direct contact with residents, as defined in He-P 804.03(s), or prepare or serve food who have a history of TB or a positive skin test shall have a symptomatology screen in lieu of a TB test.



(r) Within the first 7 days of employment, personnel who have direct contact with clients or who prepare or serve food shall receive a tour of the ALR-RC and an orientation that explains the following:

- (1) The residents' rights in accordance with RSA 151:20;
- (2) The ALR-RC's complaint procedures;
- (3) The duties and responsibilities of the position;
- (4) The emergency medical procedures;
- (5) The emergency and evacuation procedures;
- (6) The infection control procedures as required by He-P 804.22;
- (7) The procedures for food safety for personnel involved in preparation, serving and storing of food; and
- (8) The mandatory reporting requirements including RSA 161-F:46 and RSA 169-C:29.

(s) The licensee shall provide all personnel with an annual continuing education or in-service education training, which at a minimum contains the following:

- (1) The licensee's resident's rights and complaint procedures required under RSA 151;
- (2) The licensee's infection control program; and
- (3) The licensee's written emergency plan.

(t) The licensee shall provide an annual review of its policies and procedures for self-administration of medication, self-administration of medication with supervision and self-directed medication administration to all direct care personnel.

(u) The personnel file for each individual shall include the following:

- (1) A completed application for employment or a resume;
- (2) Proof that the individual meets the minimum age requirements;
- (3) A statement signed by each individual that he or she has received a copy of and received training on the implementation of the licensee's policy setting forth the residents rights and responsibilities as required by RSA 151:21;
- (4) A copy of the results of the criminal record check as described in (e) above;
- (5) A job description signed by the individual that identifies the:
  - a. Position title;
  - b. Qualifications and experience; and

c. Duties required by the position;

(6) Record of satisfactory completion of the orientation program required by (r) above;

(7) Information as to the general content and length of all in-service or educational programs attended;

(8) Record of satisfactory completion of all required education and experience requirements as specified in (j), (k) and (m) above;

(9) A copy of each current New Hampshire driver's license if the personnel member transports residents;

(10) Documentation that the required physical examinations, health screenings, TB test results, and radiology reports of chest x-rays, if required, have been completed by the appropriate health professionals; and

(11) The statement required by (v) below.

(v) All personnel shall sign a statement at the time the initial offer of employment is made and then annually thereafter stating that they:

(1) Do not have a felony conviction in this or any other state;

(2) Have not been convicted of a sexual assault, other violent crime, assault, fraud, abuse, neglect or exploitation or pose a threat to the health, safety or well-being of a resident; or

(3) Have not had a finding by the department or any administrative agency in this or any other state for assault, fraud, abuse, neglect or exploitation of any person.

(w) An individual shall not have to re-disclose any of the matters in (v) above if the documentation is available and the department has previously reviewed the material and determined that the individual can continue employment.

(x) The licensee shall maintain separate personnel records that:

(1) Contain the information required by (u) above; and

(2) Are protected and stored in a secure and confidential manner.

He-P 804.19 Resident Records.

(a) The licensee shall maintain a legible, current and accurate record for each resident based on services provided at the ALR-RC.

(b) At a minimum, resident records shall contain the following:

(1) A copy of the resident's residential service agreement and all documents required by He-P 804.16(b);

(2) Identification data, including:

- a. The resident's name, date of birth, marital status and social security number;
  - b. If the individual is receiving respite care as described in He-P 804.20, the resident's home address and phone number;
  - c. Resident's religious preference, if known;
  - d. Resident's veteran status; and
  - e. Name, address and telephone number of an emergency contact person;
- (3) The name and telephone number of the resident's licensed practitioner(s);
- (4) If services are provided at the ALR-RC by individuals not employed by the licensee, documentation that includes the name of the agency or individual providing the services, the date services were provided, a brief summary of the services provided and the business address and telephone number;
- (5) Resident's health insurance information;
- (6) Copies of any executed legal orders and directives, such as guardianship orders issued under RSA 464-A, a durable power of attorney for healthcare, or a living will;
- (7) A record of the health examination(s) in accordance with He-P 804.16(s) and (t);
- (8) Written, dated and signed orders for the all medications, treatments and special diets;
- (9) Results of any laboratory tests, X-rays or consultations performed at the ALR-RC;
- (10) All assessments and care plans, and documentation that the resident and the guardian or agent, if any, has participated in the development of the care plan;
- (11) All admission and progress notes;
- (12) Documentation of any alteration in the resident's daily functioning such as:
- a. Signs and symptoms of illness; and
  - b. Any action that was taken, including practitioner notification;
- (13) Documentation of medical, nursing or other specialized care, as applicable;
- (14) Documentation of unusual incidents;
- (15) The consent for release of information signed by the resident, guardian or agent, if any;
- (16) Discharge planning and referrals;
- (17) Transfer or discharge documentation, including notification to the resident, guardian or agent, if any, of involuntary room change, if applicable;

(18) The medication record as required by He-P 804.17(ah)(4) and (5) and (aj);

(19) Information data sheet, which contains the information required by He-P 804.16(y); and

(20) Documentation of a resident's refusal of any care or services.

(c) Resident records and resident information shall be kept confidential and only provided in accordance with law.

(d) The licensee shall develop and implement a written policy and procedure document that specifies the method by which release of information from a resident's record shall occur.

(e) When not being used by authorized personnel, resident records shall be safeguarded against loss or unauthorized use or access.

(f) Records shall be retained for 4 years after discharge, except that when the resident is a minor, records shall be retained until the person reaches the age of 19, but no less than 4 years after discharge.

(g) The licensee shall arrange for storage of, and access to, resident records as required by (f) above in the event the ALR-RC ceases operation.

#### He-P 804.20 Respite Care in ALR-RC.

(a) The licensee shall only admit an individual for respite care services when the needs of the individual are compatible with the services and programs offered by the facility as allowed by its license and the facility can meet the needs of the individual in accordance with He-P 804.15.

(b) When a temporary admission to an ALR-RC occurs and the individual is scheduled for a stay of no more than 21 consecutive days as agreed upon by the individual and the licensee as part of a discharge plan, the licensee shall:

(1) Obtain written verification signed by the resident, guardian or agent, if any, or personal representative, indicating they have been given a copy of the resident rights and responsibilities as required by RSA 151:20, I;

(2) Obtain a signed admissions contract listing the services that shall be provided;

(3) Require that all respite residents either self-administer medications, self direct medication administration or self-administer medications with supervision;

(4) Be permitted to use the prescription label on the medication container as the licensed practitioner's order provided that:

a. The medication is in the original bottle as dispensed by the pharmacy;

b. The pharmacy label has not been altered in any manner;

c. The prescription label indicates that the medication is still current; and

d. The medication container contains all the same pills or has been labeled by the pharmacy verifying that the bottle contains all the same prescription;

(5) Complete the RAT prior to or immediately on admission to determine that the potential resident does not receive a score of 2 or higher on the RAT;

(6) Identify the resident's allergies, if any, diagnoses and history of wandering or unexplained absences; and

(7) Obtain advanced directives information, if available.

(c) For planned recurrent respite care the resident shall be discharged but may be readmitted using the same admission documents completed within the previous 6 months, as long as there are no identified changes in the resident's condition or care needs.

(d) If the resident exceeds the 21-day time period:

(1) The resident shall no longer be considered respite care; and

(2) A complete admission shall occur within 72 hours.

#### He-P 804.21 Food Services.

(a) The licensee shall provide food services that meet:

(1) The US Department of Agriculture recommended dietary allowance as specified in the 2005 Dietary Guidelines for Americans;

(2) The nutritional needs of each resident; and

(3) The special dietary needs associated with health or medical conditions for each resident as identified on the RAT.

(b) Each resident shall be offered at least 3 meals in each 24-hour period when the resident is in the licensed premise, unless contraindicated by the resident's care plan.

(c) There shall be no more than 14 hours between the evening meal and breakfast except if:

(1) The licensee offers snacks at bedtime;

(2) The resident agrees, in writing, to allow more than 14 hours between the evening meal and breakfast; or

(3) The resident refuses to eat a specific meal.

(d) Snacks shall be offered and available between meals and at bedtime if not contraindicated by the resident's care plan.

(e) If a resident refuses the item(s) on the menu, a substitute shall be offered.

(f) Each day's menu shall be posted in a place accessible to food service personnel and residents.

- (g) A dated record of menus as served shall be maintained for at least the previous 4 weeks.
- (h) The licensee shall provide therapeutic diets to residents only as directed by a licensed practitioner or other professional with prescriptive authority.
- (i) If a resident has a pattern of refusing to follow a prescribed diet, personnel shall document the reason for the refusal in the resident's medical record and notify the resident's licensed practitioner.
- (j) For the purposes of emergency preparedness, each licensee shall have the following supplies of foods maintained on the premises for the licensed capacity:
  - (1) Enough refrigerated, perishable foods for a 3-day period;
  - (2) Enough non-perishable foods for a 7-day period; and
  - (3) Enough drinking water for a 3-day period.
- (k) All food and drink provided to the residents shall be:
  - (1) Safe for human consumption and free of spoilage or other contamination;
  - (2) Stored, prepared and served in a manner consistent with safe food handling practices for the prevention of food borne illnesses, including those set forth in He-P 2300;
  - (3) Served at the proper temperatures;
  - (4) Labeled, dated and stored at proper temperatures; and
  - (5) Stored so as to protect it from dust, insects, rodents, overhead leakage, unnecessary handling and all other sources of contamination.
- (l) The use of outdated, unlabeled food or canned goods that have damage to their hermetic seal shall be prohibited and such goods shall be immediately discarded.
- (m) All food not in the original package shall be stored in labeled and dated containers designed for food storage.
- (n) All work surfaces shall be non-porous and cleaned and sanitized after each use.
- (o) All dishes, utensils and glassware shall be in good repair, cleaned and sanitized after each use and properly stored.
- (p) All food service equipment shall be kept clean and maintained according to manufacturer's guidelines.
- (q) Food service areas shall not be used to empty bedpans or urinals or as access to toilet and utility rooms.
- (r) If soiled linen is transported through food service areas, the linen shall be in an impervious container.

(s) Garbage or trash in the kitchen area shall be placed in lined containers with covers.

(t) All ALR-RC personnel involved in the preparing and serving of food shall wash their hands and exposed portions of their arms with liquid soap and running water before handling or serving food.

He-P 804.22 Infection Control.

(a) The ALR-RC shall develop and implement an infection control program, including written procedures for:

(1) Proper hand washing techniques;

(2) The utilization of standard precautions, as published in the United States Centers for Disease Control and Prevention “2007 Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings,” June 2007 edition;

(3) The management of residents with infectious or communicable diseases or illnesses;

(4) The handling, storage, transportation and disposal of those items identified as infectious waste in Env-Sw 103.28; and

(5) The reporting of infectious and communicable diseases required by He-P 301.

(b) The ALR-RC shall develop and present infection control education that at a minimum addresses the:

(1) Causes, effects and transmission of infections; and

(2) Prevention and containment of infections.

(c) Personnel infected with a disease or illness transmissible through food, fomites or droplets, shall not work in food service or provide direct care in any capacity until they are no longer contagious.

(d) Personnel infected with scabies or lice shall not provide direct care to residents or work in food services until such time as they are no longer infected.

(e) Personnel with a newly positive TB test or a diagnosis of suspected active pulmonary or laryngeal tuberculosis shall be excluded from the ALR-RC until a diagnosis of tuberculosis is excluded, or until the person is receiving tuberculosis treatment and has been determined to be noninfectious by a licensed practitioner.

(f) Personnel with an open wound who work in food service or provide direct care in any capacity shall cover the wound at all times by an impermeable, durable, fitted bandage.

(g) A licensee caring for residents with infectious or communicable diseases shall have available appropriate isolation accommodations, equipment, rooms and personnel as published in the United States Centers for Disease Control and Prevention “2007 Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings,” June 2007 edition.

(h) Care provided under (g) above shall be under the direction of the resident’s licensed practitioner.

(i) In accordance with RSA 151:9-b, the licensee shall:

- (1) Arrange for or provide all consenting residents an immunization for influenza and pneumococcal disease;
- (2) Arrange for or provide all consenting personnel an immunization for influenza; and
- (3) Report immunization data to the department's immunization program.

He-P 804.23 Sanitation.

- (a) The licensee shall maintain a clean, safe and sanitary environment, both inside and outside.
- (b) The furniture, floors, ceilings, walls, and fixtures shall be clean, sanitary and in good repair.
- (c) A supply of potable water shall be available for human consumption and food preparation, pursuant to Env-Ws 315 and 316.
- (d) A supply of hot and cold running water shall be available at all times and precautions, such as temperature regulation, shall be taken to prevent a scalding injury to the residents.
- (e) Hot water shall be of a high enough temperature to ensure sanitation and food safety when used for laundry and food preparations.
- (f) All resident bathing and toileting facilities shall be cleaned and disinfected as often as necessary to prevent illness or contamination.
- (g) Cleaning solutions, compounds and substances considered hazardous or toxic materials, as defined in RSA 147-A:2 VII, shall be distinctly labeled and legibly marked so as to identify the contents and stored in a place, such as a locked box, separate from food, medications and resident supplies.
- (h) Toxic materials shall not be used in a way that contaminates food, equipment or utensils or in any way other than in full compliance with the manufacturer's labeling.
- (i) Only individuals authorized under RSA 430:33 may apply pesticides, as defined by RSA 430:29, XXVI, in food storage, food preparation or dining areas.
- (j) Solid waste, garbage and trash shall be stored in a manner to make it inaccessible to insects and rodents, outdoor animals and facility pets.
- (k) In-house trash and garbage receptacles shall be emptied in a timely manner and lined, or cleaned and disinfected after emptying or when visibly soiled.
- (l) Trash receptacles in food service areas shall be covered at all times, except during food preparation and subsequent clean-up.
- (m) Laundry and laundry rooms shall meet the following requirements:
  - (1) Laundry and laundry rooms shall be kept separate from kitchen and dining areas;



- (2) Clean linen shall be stored in a clean area and be separated from soiled linens at all times;
  - (3) Soiled materials, linens and clothing shall be transported in a laundry bag, sack or container and washed in a sanitizing solution used in accordance with the manufacturer's recommendations; and
  - (4) Soiled linens and clothing which are considered contaminated with infectious waste under Env-Sw 103.28 shall be handled as infectious waste.
- (n) Laundry rooms and bathrooms shall have non-porous floors.
  - (o) Sterile or clean supplies shall be stored in dust and moisture-free storage areas.
  - (p) Any ALR-RC that has its own water supply and whose water has been tested and failed to meet the acceptable levels identified in this section, or as required by the department of environmental services, shall notify the department of the failed water test to assure that prompt corrective action is taken.

He-P 804.24 Physical Environment.

- (a) The physical environment shall be maintained, inside and outside, so as to provide for the health, safety, well-being, comfort and privacy of resident(s) and personnel, including reasonable accommodations for residents and personnel with mobility limitations.
- (b) Equipment providing heat within an ALR-RC including, but not limited to, gas furnace or boiler, oil furnace or boiler, wood stove or pellet stove shall:
  - (1) Maintain a temperature as follows, except where residents have control of the thermostat in their own room:
    - a. Be at least 65 degrees Fahrenheit at night; and
    - b. Be at least 70 degrees Fahrenheit during the day if the resident(s) are present; and
  - (2) Be serviced once a year or as recommended by the manufacturer with written documentation of such service retained for at least 4 years.
- (c) Electric heating systems shall be exempt from (b)(2) above.
- (d) Portable space heating devices shall be prohibited, unless the following conditions are met:
  - (1) Such devices are used only in employee areas where personnel are present and awake at all times; and
  - (2) The heating elements of such devices do not exceed 212 degrees Fahrenheit.
- (e) Unvented fuel-fired heaters shall not be used in any ALR-RC.
- (f) Plumbing shall be sized, installed, and maintained in accordance with the International Plumbing Code 2000, as specified in the State Building Code under RSA 155-A.

(g) Ventilation shall be provided in all enclosed living areas by means of a mechanical ventilation system or one or more screened windows that can be opened.

(h) Each resident bedroom shall have natural lighting provided by at least one operable window with a screen to the outside, which is of a size equivalent to or greater than 8% of the room's gross square footage.

(i) The number of sinks, toilets, tubs or showers shall be in a ratio of 1 for every 6 individuals, unless household members and personnel have separate bathroom facilities not used by residents.

(j) All bathrooms shall:

- (1) Be equipped with a door that either swings or slides; and
- (2) Not have a folding door or a curtain.

(k) All showers and tubs shall have slip resistant floors and surfaces which are intact, easily cleanable, and impervious to water.

(l) All hand-washing facilities shall be provided with hot and cold running water.

(m) Bedrooms shall have at least 100 square feet for each resident in each private bedroom and at least 80 square feet for each resident in a semi-private bedroom, exclusive of space required for closets, wardrobes and toilet facilities.

(n) Bedrooms in an ALR-RC licensed prior to the effective date of these rules shall:

- (1) Be exempt from (m) above;
- (2) Provide at least 80 square feet per resident in a private room; and
- (3) Provide at least 70 square feet per resident in a semi-private room.

(o) The space requirements in (l), (m) and (n) above shall be exclusive of space required for closets, wardrobes, and bathroom.

(p) Each bedroom shall:

- (1) Contain no more than 2 beds;
- (2) Have its own separate entry to permit the resident to reach his/her bedroom without passing through the room of another resident;
- (3) Have a side hinge door and not a folding or sliding door or a curtain;
- (4) Not be used simultaneously for other purposes;
- (5) Be separated from halls, corridors and other rooms by floor to ceiling walls; and
- (6) Be located on the same level as the bathroom facilities, if the resident has impaired mobility as identified by the RAT.

(q) The licensee shall provide the following for the residents' use, as needed:

- (1) A bed appropriate to the needs of the resident;
- (2) A firm mattress that complies with Saf-C 6000;
- (3) Clean linens, blankets and a pillow;
- (4) A bureau, mirror and bedside table;
- (5) A lamp;
- (6) A chair;
- (7) A closet or storage space for personal belongings; and
- (8) Window blinds, shades or curtains that provide privacy.

(r) The resident may use his or her own personal possessions provided they do not pose a risk to the resident or others.

(s) The licensee shall provide the following rooms to meet the needs of residents:

- (1) One or more living rooms or multipurpose rooms; and
- (2) Dining facilities with a seating capacity capable of meeting the needs of all residents.

(t) Each licensee shall have a communication system in place so that all residents can effectively contact personnel when they need assistance with care or in an emergency.

(u) Lighting shall be available to allow residents to participate in activities such as reading, needlework or handicrafts.

(v) All bathroom, bedroom and closet door latches or locks shall be designed for easy opening from the inside and outside in an emergency.

(w) Screens shall be provided for doors, windows or other openings to the outside.

(x) Doors that are self-closing and remain closed when not in use shall be exempt from the requirement in (v) above.

#### He-P 804.25 Emergency and Fire Safety.

(a) All new ALR-RC's shall meet at a minimum the residential board and care chapter of NFPA 101 as adopted by the department of safety in Saf-C 6000.

(b) All ALR-RC's shall have:

- (1) Smoke detectors on every level and in every bedroom that are interconnected and either hardwired, powered by the ALR-RC's electrical service, or wireless, as approved by the state fire marshal for the ALR-RC;

- (2) At least one ABC type fire extinguisher on every level and maintained in accordance with National Fire Protection Association 10, Standard for Portable Fire Extinguisher, 2002 edition, as adopted by the state fire code, Saf-C 6000; and
  - (3) An approved carbon monoxide monitor on every level.
- (c) An emergency and fire safety program shall be developed and implemented to provide for the safety of residents and personnel.
- (d) Immediately following any fire or emergency situation, licensees shall notify the department by phone to be followed by written notification within 72 hours, with the exception of:
- (1) A false alarm or emergency medical services (EMS) transport for a non-emergent reason; or
  - (2) Emergency EMS transport related to pre-existing conditions.
- (e) The written notification required by (d) above shall include:
- (1) The date and time of the incident;
  - (2) A description of the location and extent of the incident, including any injury or damage;
  - (3) A description of events preceding and following the incident;
  - (4) The name of any personnel or residents who were evacuated as a result of the incident, if applicable;
  - (5) The name of any personnel or residents who required medical treatment as a result of the incident, if applicable; and
  - (6) The name of the individual the licensee wishes the department to contact if additional information is required.
- (f) If the licensee has chosen to allow smoking within the ALR-RC, a designated smoking area shall be provided which:
- (1) Has a dedicated ventilation system, so that smoke or odors cannot escape or be detected outside the designated smoking room;
  - (2) Has walls and furnishings constructed of non-combustible materials;
  - (3) Has metal waste receptacles and safe ashtrays; and
  - (4) Is in compliance with the requirements of RSA 155:64–77, the Indoor Smoking Act.
- (g) Each licensee shall develop a written emergency plan that covers:
- (1) Loss of electricity, water or heat;
  - (2) Bomb threat;

- (3) Severe weather;
  - (4) Fire;
  - (5) Gas leaks;
  - (6) Unexplained resident absences; and
  - (7) Any situation that requires evacuation of the ALR-RC.
- (h) Each licensee shall:
- (1) Annually review and revise, as needed, its emergency plan;
  - (2) Submit its emergency plan to the local emergency management director and fire chief, if different than the emergency management director, for review and approval when initially written and whenever the plan is revised; and
  - (3) Maintain documentation on-site which establishes that the emergency plan has been approved as required under (2) above.
- (i) Each ALR-RC that has been pre-approved, in writing by the local emergency management director, as an emergency shelter may accept on an emergency basis, residents of their local community provided that:
- (1) They have a generator capable of supplying the entire facility;
  - (2) They have sufficient personnel and food to meet the needs of both the residents and any evacuees; and
  - (3) They make arrangements to transfer the evacuee as soon as practicable if they learn after accepting the evacuee that they cannot meet his or her needs.
- (j) Evacuation drills shall be conducted monthly as follows:
- (1) Each employee shall participate in at least one drill every calendar quarter; and
  - (2) Each drill shall include the transmission of a fire alarm signal, evacuation of the ALR-RC and simulation of emergency fire conditions.
- (k) For personnel who are unable to participate in the scheduled drill described in (j) above, on the day they return to work the administrator or designee shall, if applicable, instruct them as to any changes in the facility fire and emergency plan and document such instruction in their personnel file, with a copy on file with the emergency safety plan for review by department personnel during site visits.
- (l) Personnel who are unable to participate in a drill in accordance with (j)(1) and (k) above shall:
- (1) Participate in a drill within the next quarter; and
  - (2) Not miss more than one required quarterly fire drill in a 12-month period.

- (m) Per-diem or temporary personnel shall not be the only person awake unless they have:
- (1) Participated in at least 2 actual fire drills in the facility in the past year; and
  - (2) Participated in the facility's orientation program pursuant to He-P 804.18(s).
- (n) The timing of monthly drills shall be conducted in accordance with the following:
- (1) Drill shall be at varying times to include all shifts and all residents and individuals in the ALR-RC at the time of the drill;
  - (2) At least 3 drills per year shall be conducted during the night when residents are sleeping; and
  - (3) Each required nighttime drill shall be conducted in different quarters of the year.
- (o) All emergency and evacuation drills shall be documented and include the following information:
- (1) The printed names of the participating personnel and residents, with signatures or printed initials next to the name of each personnel member;
  - (2) The time, including an indication as to AM or PM, date, month, and year the drill was conducted;
  - (3) The exits utilized;
  - (4) The total time necessary to evacuate the ALR-RC, if required;
  - (5) The time needed to complete the drill; and
  - (6) Any problems encountered and corrective actions taken to rectify problems.
- (p) The state fire marshal shall be the ultimate authority relative to the state fire code and NFPA 101 as adopted by the department of safety in Saf-C 6000.

### Appendix B

<b>Rule</b>	<b>Specific State or Federal Statutes the Rule Implements</b>
He-P 804.01	RSA 151:9, I(a); RSA 151:9, VII(a)(1)
He-P 804.03	RSA 151:9, I(a); RSA 151:9, VII(a)(1)
He-P 804.04 – He-P 804.06	RSA 151:9, I(c); RSA 151:9, VII(a)(1)
He-P 804.07 – He-P 804.08	RSA 151:9, I(a); RSA 151:9, VII(a)(1)
He-P 804.09	RSA 151:9, I(e); RSA 151:9, VII(a)(1)
He-P 804.10	RSA 151:9, I(a); RSA 151:9, VII(a)(1)
He-P 804.11	RSA 151:9, I(e); RSA 151:9, VII(a)(1)
He-P 804.12	RSA 151:9, I(l); RSA 151:9, VII(a)(1)
He-P 804.13	RSA 151:9, I(f); RSA 151:9, VII(a)(1)
He-P 804.14 – He-P 804.25	RSA 151:9, I(a); RSA 151:9, VII(a)(1)